

**2003 DRAFTING REQUEST****Bill**Received: **12/13/2002**Received By: **mkunkel**Wanted: **As time permits**

Identical to LRB:

For: **Jean Hundertmark (608) 266-3794**By/Representing: **Mary Klaver**This file may be shown to any legislator: **NO**Drafter: **mkunkel**May Contact: **Mary Klaver**

Addl. Drafters:

Subject: **Health - miscellaneous**  
**Health - abortion**  
**Occupational Reg. - misc**  
**Discrimination**

Extra Copies: **PJH, GMM, DAK**Submit via email: **YES**Requester's email: **Rep.Hundertmark@legis.state.wi.us**

Carbon copy (CC:) to:

**Pre Topic:**

No specific pre topic given

**Topic:**

Exempting certain health care professionals from discipline and liability for refusing to be involved in abortions, sterilizations, euthanasia and certain oth

**Instructions:**

Redraft 2001 AB 168 (with revisions), as amended by AA2 (but not AA1) and 01a0474/2 (as revised)

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mkunkel 12/19/2002	csicilia 12/23/2002					State
/1			chaugen		amentkow	lemery	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
			12/23/2002 _____		12/23/2002	01/15/2003	

FE Sent For:

*At intro*

<END>

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12/23/2002 \_\_\_\_\_

12/23/2002

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12/18/2002 11:06:05 AM

Page 1

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/?	mkunkel	igs 12/23	CH 12/23	CH 12-23			

FE Sent For:

&lt;END&gt;

2001 ASSEMBLY BILL 168

March 1, 2001 - Introduced by Representatives WALKER, STASKUNAS, ALBERS, COLON, DUFF, J. FITZGERALD, FREESE, GUNDERSON, GUNDRUM, HOVEN, HUEBSCH, JESKEWITZ, JOHNSRUD, KEDZIE, KRAWCZYK, LADWIG, F. LASEE, M. LEHMAN, LEIBHAM, LIPPERT, LOEFFELHOLZ, MCCORMICK, D. MEYER, MONTCOMERY, NASS, OTT, OWENS, PETROWSKI, PETTIS, RHOADES, RYBA, STARZYK, STONE, SUDER, SYKORA, UNDERHEIM, URBAN, VRAKAS, WIECKERT and ZIEGELBAUER, cosponsored by Senators BRESKE, ROESSLER, BAUMGART, COWLES, FARROW, S. FITZGERALD, HARSDFORF, LAZICH, SCHULTZ and WELCH. Referred to Committee on Labor and Workforce Development.

AN ACT *to renumber and amend* 111.337 (1), 253.09 (1), 441.06 (6) and 448.03 (5) (a), *to amend* 253.09 (title), 253.09 (2), 253.09 (3), 253.09 (4) (a), 253.09 (4) (b) 1., 253.09 (4) (b) 2., 441.06 (title) and 448.03 (5) (title); and *to create* 111.337 (1g), 111.337 (1r) (b), 253.09 (1g), 253.09 (1r) (a) 1. to 7., 253.09 (5), 441.06 (6) (a), 441.06 (6) (b) 1. to 7., 441.06 (7), 441.06 (8), 448.03 (5) (ag), 448.03 (5) (am), 448.03 (5) (ao), 448.03 (5) (ar) 1. to 7. and 450.135 of the statutes, relating to: employment discrimination based on creed and exemption from liability and discipline for physicians, nurses, pharmacists, other health care providers and hospital employees who refuse to participate in sterilization, abortion, assisted suicide, and other procedures on moral or religious grounds.

Analysis by the Legislative Reference Bureau

Under current law, with certain exceptions, an employer may not engage in employment discrimination based on creed. "Creed" is defined as a system of religious beliefs, including moral or ethical beliefs about right and wrong, that a person sincerely holds with the strength of traditional religious views. Employment discrimination based on creed is defined to include refusing to reasonably

INSERT 1A

Employment discrimination based on creed, mfl

Bold & ital.

LPS: this is not a subhead - the drafter in wants it anal: text material

O - NOTE

SA ✓ SA ✓  
P ✓ X-10b ✓  
new cr ✓

EDIT By NOON MONDAY 12/23

\* PWF all sections containing amended text

-1170/1

RM not ANN

AND WORD PROCESS by 4:30 pm that same day?

gen cat.

1-10

## ASSEMBLY BILL 168

an employee or prospective employee

accommodate an employee's or prospective employee's religious observances or practices unless the employer can demonstrate that the accommodation would pose an undue hardship.

This bill expands the definition of employment discrimination based on creed to include discriminating against ~~an employee or prospective employee~~ on the basis of his or her refusal, based on creed, to participate in any of the following activities: 1) sterilization procedures; 2) ~~certain procedures that prevent the implantation of a fertilized human ovum~~; 3) abortions; 4) experiments or medical procedures that involve the destruction of a human embryo or that involve a human embryo or unborn child but do not relate to the beneficial treatment of the human embryo or unborn child; 5) procedures using fetal tissue or organs other than fetal tissue or organs from a stillbirth, spontaneous abortion, or miscarriage; 6) withholding or withdrawing nutrition or hydration under certain circumstances; or 7) acts ~~causing~~ intentionally or assisting in the death of an individual, including assisted suicide, euthanasia, or mercy killing. There is no exception for an employer to show that the refusal poses an undue hardship.

Under current law, hospitals, certain health care professionals and hospital employees may not, under certain circumstances, be required to participate in procedures involving sterilization or the removal of a human embryo or fetus. Specifically, a hospital may not be required to admit a patient or allow the use of its facilities for such a procedure. In addition, physicians and other hospital employees who object, in writing, to participating in such a procedure on moral or religious grounds may not be disciplined for refusing to participate in the procedure. Also, a hospital, school, or employer may not take any disciplinary action regarding employment, staff, or student status against a person who refuses to participate in such a procedure if the refusal is based on moral or religious precepts. Finally, under current law, a hospital and the following persons are exempt from liability for damages that result from a refusal to perform such a procedure if the refusal is based on religious or moral precepts: persons employed by or associated with the staff of a hospital, physicians, and other health care professionals licensed or certified by the medical examining board in the department of regulation and licensing (DRL) and registered nurses licensed by the board of nursing in DRL.

This bill expands all of the provisions described above regarding hospitals, health care professionals, and hospital employees to include a refusal to participate, based on moral or religious grounds, in any of the ~~seven~~ activities described above with respect to employment discrimination based on creed. In addition, the bill allows a person who is adversely affected by conduct that violates these provisions to bring a civil action for injunctive relief, damages, and attorneys fees. Also, the bill provides that pharmacists licensed by the pharmacy examining board in DRL are exempt from liability for damages that result from a refusal to participate in any of the ~~seven~~ activities if the refusal is based on religious or moral precepts. In addition, the bill changes the exemptions from liability under current law for physicians and other health care professionals licensed or certified by the medical examining board and registered nurses licensed by the board of nursing so that they are consistent with the exemption under the bill for pharmacists.

Refusals to participate in procedures on moral or religious grounds. not

Both \$ ital.

## ASSEMBLY BILL 168

Also, the bill specifies that the medical examining board, board of nursing, pharmacy examining board, <sup>and</sup> ~~DRL~~ <sup>SIX</sup> may not take any disciplinary action against any of the following who, in writing, refuse, or state an intention to refuse, to participate in any of the ~~seven~~ activities if the refusal is based on moral or religious grounds: a physician or other health care professional licensed or certified by the medical examining board, registered nurse licensed by the board of nursing, or pharmacist licensed by the pharmacy examining board. In addition, the bill allows a physician, registered nurse, or pharmacist who is adversely affected by conduct that violates this prohibition to bring a civil action for injunctive relief, damages, and attorneys fees. Finally, under the bill, the medical examining board may not take disciplinary action against a physician who makes such a refusal even if the physician refuses to transfer a patient who has executed a declaration authorizing the withholding or withdrawal of life-sustaining procedures or feeding tubes, or who has executed a power of attorney for health care instrument consenting to the withholding or withdrawal of feeding tubes, to another physician who will comply with the declaration or instrument. However, under the bill, the medical examining board may take disciplinary action against a physician who makes such a refusal if the physician refuses to transfer an incapacitated, terminally ill patient who has executed such a declaration.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1 SECTION 1. 111.337 (1) of the statutes is renumbered 111.337 (1r) (intro.) and  
2 amended to read:

3 111.337 (1r) (intro.) Employment discrimination because of creed includes, but  
4 is not limited to, refusing any of the following:

5 (a) Refusing to reasonably accommodate an employee's or prospective  
6 employee's religious observance or practice unless the employer can demonstrate  
7 that the accommodation would pose an undue hardship on the employer's program,  
8 enterprise, or business.

9 SECTION 2. 111.337 (1g) of the statutes is created to read:

10 111.337 (1g) In this section:

11 (a) "Health care provider" means any of the following:



## ASSEMBLY BILL 168

## SECTION 2

1. An individual licensed, registered, permitted, or certified by the department of health and family services or the department of regulation and licensing to provide health care services in this state.

2. An individual who provides health care services as directed, supervised, or inspected by an individual specified in subd. 1.

(a) (b) "Human embryo" <sup>means a human</sup> includes ~~any~~ organism that is derived by fertilization, parthenogenesis, cloning, or any other means from one or more human gametes or human diploid cells. INSERT 4-8 ✓

(b) (c) "Participate in" means to perform, assist in, recommend, counsel in favor of, make referrals for, prescribe, dispense, or administer drugs for, or otherwise promote, encourage, or aid. ✓

SECTION 3. 111.337 (1r) (b) of the statutes is created to read:

111.337 (1r) (b) Discriminating against ~~any health care provider~~ <sup>an employee or prospective employee</sup> by engaging in any of the actions prohibited under s. 111.322 on the basis of the ~~health care~~ <sup>refusal</sup>, or statement of an intention to refuse, whether or not in writing, based on his or her creed, to participate in any of the following:

1. A sterilization procedure. ✓

2. A procedure involving a drug or device that may prevent the implantation of a fertilized human ovum.

3. An abortion, as defined in s. 253.10 (2) (a). ✓

4. An experiment or medical procedure involving any of the following:

a. The destruction of a human embryo. ✓

b. A human embryo or unborn child, at any stage of development, in which the experiment or procedure is not related to the beneficial treatment of the human embryo or unborn child. ✓

employee's or prospective  
employee's

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INSERT 5-7

1 4-5. A procedure, including a transplant procedure, that uses fetal tissue or  
2 organs other than fetal tissue or organs from a stillbirth, spontaneous abortion, or  
3 miscarriage.

4 5-6. The withholding or withdrawal of nutrition or hydration, unless the  
5 administration of nutrition or hydration is medically contraindicated.

6 6-7. An act that <sup>intentionally</sup> causes or assists in causing the death of an individual, such as  
7 by assisted suicide, euthanasia, or mercy killing. ✓

8 SECTION 4. 253.09 (title) of the statutes is amended to read:

9 253.09 (title) **Abortion refused Refusal to participate in certain**  
10 **practices; no liability; no discrimination.**

11 SECTION 5. 253.09 (1) of the statutes is renumbered 253.09 (1r) (a) (intro.) and  
12 amended to read:

13 253.09 (1r) (a) (intro.) No hospital ~~shall be~~ is required to admit any patient or  
14 to allow the use of the hospital facilities for the purpose of performing ~~a sterilization~~  
15 ~~procedure or removing a human embryo or fetus.~~ any of the following:

16 (b) A physician or any other person who is a member of or associated with the  
17 staff of a hospital, or any employee of a hospital in which such a procedure the  
18 performance of an activity specified in par. (a) 1. to <sup>6</sup> ~~has been authorized, who shall~~  
19 ~~state in writing his or her objection to the performance of or providing assistance to~~  
20 ~~such a procedure, in writing, refuses, or states an intention to refuse, to participate~~  
21 ~~in the activity on moral or religious grounds shall not be required to participate in~~  
22 ~~such medical procedure, and the activity.~~ <sup>may</sup>

23 (c) A physician or any other person who is a member of or associated with the  
24 staff of a hospital, or any employee of a hospital, is immune from liability for any  
25 damage caused by, and may not be subjected to any disciplinary or recriminatory

## ASSEMBLY BILL 168

1 ~~action based on, the refusal of any such the person to participate therein shall not~~  
2 ~~form the basis of any claim for damages on account of such refusal or for any~~  
3 ~~disciplinary or recriminatory action against such person in an activity specified in~~  
4 ~~par. (a) 1. to 7. on moral or religious grounds.~~ ✓

5 SECTION 6. 253.09 (1g) of the statutes is created to read:

6 253.09 (1g) In this section: ✓

7 (a) "Human embryo" ~~includes any~~ <sup>means a human</sup> organism that is derived by fertilization,  
8 parthenogenesis, cloning, or any other means from one or more human gametes or  
9 human diploid cells. (INSEAT 6-9) ✓

10 (b) "Participate in" means to perform, assist in, recommend, counsel in favor  
11 of, make referrals for, prescribe, dispense, or administer drugs for, or otherwise  
12 promote, encourage, or aid. ✓

13 SECTION 7. 253.09 (1r) (a) 1. to 7. of the statutes are created to read:

14 253.09 (1r) (a) 1. A sterilization procedure.

15 2. A procedure involving a drug or device that may prevent the implantation  
16 of a fertilized human ovum.

17 3. An abortion, as defined in s. 253.10 (2) (a). ✓

18 4. An experiment or medical procedure involving any of the following:

19 a. The destruction of a human embryo.

20 b. A human embryo or unborn child, at any stage of development, in which the  
21 experiment or procedure is not related to the beneficial treatment of the human  
22 embryo or unborn child. ✓

23 5. A procedure, including a transplant procedure, that uses fetal tissue or  
24 organs other than fetal tissue or organs from a stillbirth, spontaneous abortion, or  
25 miscarriage.

## ASSEMBLY BILL 168

1 ~~5~~<sup>intentionally</sup> 6. The withholding or withdrawal of nutrition or hydration, unless the  
2 administration of nutrition or hydration is medically contraindicated.

3 ~~6~~ 7. An act that causes or assists in causing the death of an individual, such as  
4 by assisted suicide, euthanasia, or mercy killing.

5 SECTION 8. 253.09 (2) of the statutes is amended to read:

6 253.09 (2) No A hospital or employee of any a hospital shall be liable for any  
7 civil damages resulting from is immune from liability for any damage caused by a  
8 refusal to perform sterilization procedures or remove a human embryo or fetus from  
9 a person, if such participate in an activity specified in sub. (1r) (a) 1. to ~~7~~<sup>6</sup>, if the  
10 refusal is based on religious or moral precepts.

11 SECTION 9. 253.09 (3) of the statutes is amended to read:

12 253.09 (3) No hospital, school, or employer may discriminate against any  
13 person with regard to admission, hiring or firing, tenure, term, condition, or privilege  
14 of employment, student status, or staff status on the ground that the person refuses  
15 to recommend, aid or perform procedures for sterilization or the removal of a human  
16 embryo or fetus, or states an intention to refuse, whether or not in writing, to  
17 participate in an activity specified in sub. (1r) (a) 1. to ~~7~~<sup>6</sup>, if the refusal is based on  
18 religious or moral precepts.

19 SECTION 10. 253.09 (4) (a) of the statutes is amended to read:

20 253.09 (4) (a) Such individual to perform or assist in the performance of any  
21 sterilization procedure or removal of a human embryo or fetus participate in an  
22 activity specified in sub. (1r) (a) 1. to ~~7~~<sup>6</sup>, if the individual's performance or assistance  
23 participation in the performance of such a procedure would be activity is contrary to  
24 the individual's religious beliefs or moral convictions; or

25 SECTION 11. 253.09 (4) (b) 1. of the statutes is amended to read:

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## SECTION 11

1           253.09 (4) (b) 1. Make its facilities available for ~~the performance of any~~  
2           sterilization procedure or removal of a human embryo or fetus an individual to  
3           participate in an activity specified in sub. (1r) (a) 1. to ~~7.~~<sup>9.6</sup> if the performance of such  
4           a procedure in such facilities is prohibited by the entity prohibits the activity from  
5           taking place in the facilities on the basis of religious beliefs or moral convictions; or

6           SECTION 12. 253.09 (4) (b) 2. of the statutes is amended to read:

7           253.09 (4) (b) 2. Provide any personnel for the performance or assistance in the  
8           performance of any sterilization procedure or assistance to participate in an activity  
9           specified in sub. (1r) (a) 1. to ~~7.~~<sup>9.6</sup> if the performance or assistance in the performance  
10          of such procedure or the removal of a human embryo or fetus by such personnel would  
11          be activity is contrary to the religious beliefs or moral convictions of ~~such the~~  
12          personnel.

13          SECTION 13. 253.09 (5) of the statutes is created to read:

14          253.09 (5) A person who is adversely affected by, or who reasonably may be  
15          expected to be adversely affected by, conduct that is in violation of this section may  
16          bring a civil action for injunctive relief, including reinstatement, <sup>or</sup> damages, including  
17          damages for emotional or psychological distress, or both injunctive relief and  
18          damages. In an action under this subsection, the court shall award reasonable  
19          attorney fees, notwithstanding s. 814.04<sup>✓</sup> (1), to a person who obtains injunctive relief,  
20          an award of damages, or both.

21          SECTION 14. 441.06 (title) of the statutes is amended to read:

22          **441.06 (title) Licensure; civil liability and disciplinary exemption.**

23          SECTION 15. 441.06 (6) of the statutes is renumbered 441.06 (6) (b) (intro.) and  
24          amended to read:

## ASSEMBLY BILL 168

1 441.06 (6) (b) (intro.) No A person licensed as a registered nurse under this  
2 section is ~~liable for any civil damages resulting from~~ immune from liability for any  
3 damage caused by his or her refusal to perform sterilization procedures or to remove  
4 or aid in the removal of a human embryo or fetus from a person, assist in, recommend,  
5 counsel in favor of, make referrals for, prescribe, dispense, or administer drugs for,  
6 or otherwise promote, encourage, or aid any of the following, if the refusal is based  
7 on religious or moral precepts:

8 SECTION 16. 441.06 (6) (a) of the statutes is created to read:

9 441.06 (6) (a) In this subsection, "human embryo" <sup>means a human</sup> ~~includes any~~ organism that  
10 is derived by fertilization, parthenogenesis, cloning, or any other means from one or  
11 more human gametes or human diploid cells. INSERT 9-11

12 SECTION 17. 441.06 (6) (b) 1. to <sup>6</sup>9. of the statutes are created to read:

13 441.06 (6) (b) 1. A sterilization procedure.

14 2. A procedure involving a drug or device that may prevent the implantation  
15 of a ~~fertilized~~ human ~~embryo~~.

16 3. An abortion, as defined in s. 253.10 (2) (a).

17 3.4. An experiment or medical procedure involving any of the following:

18 a. The destruction of a human embryo.

19 b. A human embryo or unborn child, at any stage of development, in which the  
20 experiment or procedure is not related to the beneficial treatment of the human  
21 embryo or unborn child.

22 4. A procedure, including a transplant procedure, that uses fetal tissue or  
23 organs other than fetal tissue or organs from a stillbirth, spontaneous abortion, or  
24 miscarriage.

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## SECTION 17

INSERT 10-1

*intentionally*

§ 16. The withholding or withdrawal of nutrition or hydration, unless the administration of nutrition or hydration is medically contraindicated.

§ 17. An act that causes or assists in causing the death of an individual, such as by assisted suicide, euthanasia, or mercy killing.

SECTION 18. 441.06 (7) of the statutes is created to read:

441.06 (7) A person licensed as a registered nurse under this section who, in writing, refuses, or states an intention to refuse, on moral or religious grounds to engage in a practice of professional nursing that is related to an activity specified in sub. (6) (b) 1. to ~~shall~~ <sup>may</sup> not be required to engage in the practice with respect to the activity and may not be disciplined by the board or the department for refusing or stating an intention to refuse to engage in the practice with respect to the activity.

SECTION 19. 441.06 (8) of the statutes is created to read:

441.06 (8) A person who is adversely affected by, or who reasonably may be expected to be adversely affected by, conduct that is in violation of sub. (7) <sup>or</sup> may bring a civil action for injunctive relief, including reinstatement, damages, including damages for emotional or psychological distress, or both injunctive relief and damages. In an action under this subsection, the court shall award reasonable attorney fees, notwithstanding s. 814.04 (1), to a person who obtains injunctive relief, an award of damages, or both.

SECTION 20. 448.03 (5) (title) of the statutes is amended to read:

448.03 (5) (title) CIVIL LIABILITY AND DISCIPLINARY EXEMPTION; CERTAIN MEDICAL PROCEDURES AND REPORTS.

SECTION 21. 448.03 (5) (a) of the statutes is renumbered 448.03 (5) (ar) (intro.) and amended to read:

## ASSEMBLY BILL 168

1 448.03 (5) (ar) (intro.) ~~No~~ A person licensed or certified under this subchapter  
2 ~~shall be liable for any civil damages resulting from such~~ is immune from liability for  
3 any damage caused by the person's refusal to perform sterilization procedures or to  
4 remove or aid in the removal of a human embryo or fetus from a person if such, assist  
5 in, recommend, counsel in favor of, make referrals for, prescribe, dispense, or  
6 administer drugs for, or otherwise promote, encourage, or aid any of the following if  
7 the refusal is based on religious or moral precepts:

8 SECTION 22. 448.03 (5) (ag) of the statutes is created to read: *means a human*

9 448.03 (5) (ag) In this subsection, "human embryo" ~~means any~~ *means any* organism that  
10 is derived by fertilization, parthenogenesis, cloning, or any other means from one or  
11 more human gametes or human diploid cells. *INSERT 11-11*

12 SECTION 23. 448.03 (5) (am) of the statutes is created to read:

13 448.03 (5) (am) A person licensed or certified under this subchapter who, in  
14 writing, refuses, or states an intention to refuse, on moral or religious grounds to  
15 engage in a practice within the scope of his or her license or certification that is  
16 related to an activity specified in par. (ar) 1. to 7. ~~shall~~ *may* not be required to engage in  
17 the practice with respect to the activity and, notwithstanding *SS* 154.07 (1) (a) 3. *and*  
18 155.50 (1) (b), may not be disciplined by the board or the department for refusing or  
19 stating an intention to refuse to engage in the practice with respect to the activity,  
20 including refusing or stating an intention to refuse to transfer a patient to another  
21 physician who will comply with a declaration, as defined in s. 154.02 (1), instrument  
22 for power of attorney for health care, as defined in s. 155.01 (10), or health care  
23 decision, as defined in s. 155.01 (5), of a health care agent, as defined in s. 155.01 (4).  
24 This paragraph does not apply to the refusal to make a good faith attempt to transfer  
25 a ~~declarant~~ *decent* with incapacity, as defined in s. 155.01 (8) and with a terminal condition,

*State: leave as typed*



## ASSEMBLY BILL 168

as defined in  
s. 154.02(1)

1 as defined in s. 154.01 (8), to another physician who will comply with the declaration  
2 of the ~~declarant~~ *patient* *stet: leave as typed*

3 SECTION 24. 448.03 (5) (ao) of the statutes is created to read:

4 448.03 (5) (ao) A person who is adversely affected by, or who reasonably may  
5 be expected to be adversely affected by, conduct that is in violation of par. (am) may  
6 bring a civil action for injunctive relief, including reinstatement, <sup>or</sup> damages, including  
7 damages for emotional or psychological distress, or both injunctive relief and  
8 damages. In an action under this paragraph, the court shall award reasonable  
9 attorney fees, notwithstanding s. 814.04 (1), to a person who obtains injunctive relief,  
10 an award of damages, or both.

11 SECTION 25. 448.03 (5) (ar) 1. to <sup>9</sup>7. of the statutes are created to read:

12 448.03 (5) (ar) 1. A sterilization procedure.

13 ~~2. A procedure involving a drug or device that ~~will~~ prevent the implantation~~  
14 ~~of a fertilized human ~~egg~~.~~

15 ~~2~~ <sup>2</sup> 8. An abortion, as defined in s. 253.10 (2) (a).

16 ~~3~~ <sup>3</sup> 4. An experiment or medical procedure involving any of the following:

17 a. The destruction of a human embryo.

18 b. A human embryo or unborn child, at any stage of development, in which the  
19 experiment or procedure is not related to the beneficial treatment of the human  
20 embryo or unborn child.

21 ~~4~~ <sup>4</sup> 5. A procedure, including a transplant procedure, that uses fetal tissue or  
22 organs other than fetal tissue or organs from a stillbirth, spontaneous abortion, or  
23 miscarriage.

24 ~~5~~ <sup>5</sup> 6. The withholding or withdrawal of nutrition or hydration, unless the  
25 administration of nutrition or hydration is medically contraindicated.

INSERT 12-24

## ASSEMBLY BILL 168

*intentionally*  
1 (c) An act that causes or assists in causing the death of an individual, such as  
2 by assisted suicide, euthanasia, or mercy killing.

3 SECTION 26. 450.135 of the statutes is created to read:

4 **450.135 Pharmacist's refusal to be involved in certain activities. (1)**

5 In this section, "human embryo" ~~includes any~~ *means a human* organism that is derived by  
6 fertilization, parthenogenesis, cloning, or any other means from one or more human  
7 gametes or human diploid cells. INSERT 13-7

8 (2) A person licensed as a pharmacist under this chapter is immune from  
9 liability for any damage caused by his or her refusal to be involved in the performance  
10 of, assistance in, recommendation of, counseling in favor of, making referrals for,  
11 11 prescribing, dispensing, or administering drugs for, or otherwise promoting,  
12 encouraging, or aiding any of the following, if the refusal is based on religious or  
13 moral precepts:

14 (a) A sterilization procedure.

15 (b) A procedure involving a drug or device that ~~may~~ *prevent* the implantation  
16 of a ~~fertilized~~ *human* ~~embryo~~.

17 *b* (c) An abortion, as defined in s. 253.10 (2) (a). ✓

18 *c* (d) An experiment or medical procedure involving any of the following:

19 1. The destruction of a human embryo.

20 2. A human embryo or unborn child, at any stage of development, in which the  
21 experiment or procedure is not related to the beneficial treatment of the human  
22 embryo or unborn child.

23 *d* (e) A procedure, including a transplant procedure, that uses fetal tissue or  
24 organs other than fetal tissue or organs from a stillbirth, spontaneous abortion, or  
25 miscarriage.

## ASSEMBLY BILL 168

## SECTION 26

INSERT 14-1

1 (f) The withholding or withdrawal of nutrition or hydration, unless the  
2 administration of nutrition or hydration is medically contraindicated.

3 (g) An act that causes or assists in causing the death of an individual, such as  
4 by assisted suicide, euthanasia, or mercy killing.

5 (3) (a) A person licensed as a pharmacist under this chapter who, in writing,  
6 refuses, or states an intention to refuse, on moral or religious grounds to engage in  
7 a practice of pharmacy that is related to an activity specified in sub. (2) (a) to (g) shall  
8 not be required to engage in the practice with respect to the activity and may not be  
9 disciplined by the board or department for refusing or stating an intention to refuse  
10 to engage in the practice with respect to the activity.

11 (b) A person who is adversely affected by, or who reasonably may be expected  
12 to be adversely affected by, conduct that is in violation of par. (a) may bring a civil  
13 action for injunctive relief, including reinstatement, <sup>or</sup> damages, including damages  
14 for emotional or psychological distress, or both injunctive relief and damages. In an  
15 action under this paragraph, the court shall award reasonable attorney fees,  
16 notwithstanding s. 814.04 (1), to a person who obtains injunctive relief, an award of  
17 damages, or both.

## SECTION 27. Initial applicability.

18  
19 (1) ~~This act first applies~~ <sup>apply</sup> to refusals or statements of an intention to refuse that  
20 are made on the effective date of this subsection.

(END)

INSERT 14-19

INSERT 14-20

2003-2004 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1170/lins  
MDK:.....

INSERT 1-10:

; and power of attorney for health care instruments and patient declarations regarding the withholding or withdrawal of life-sustaining procedures or feeding tubes ✓

INSERT 1A:

This bill makes changes to current law regarding: 1) employment discrimination based on creed; 2) refusals of certain health care providers and hospital employees to participate in certain procedures on moral or religious grounds; and 3) duties of physicians regarding power of attorney for health care instruments and patient declarations authorizing the withholding or withdrawal of life-sustaining procedures or feeding tubes.

INSERT 3A:

*Power of attorney for health care instruments and patient declarations.* Under the bill, a physician who receives a power of attorney for health care instrument described above, or who is notified that a patient has executed a declaration described above, must immediately review the instrument or declaration and, if the physician intends to refuse to participate in any of the ~~then~~ activities, the physician must, as soon as possible, inform the patient, orally and in writing, about the refusal and about any concerns that the physician has about the instrument or declaration. Similar requirements apply if a physician receives a statement of incapacity regarding a patient who has executed a power of attorney for health care instrument described above. In such cases, the physician must immediately review the statement and, if the physician intends to refuse to

STEF: leave  
as typed

the renumbering and amendment of  
section 441.06 (6) of the statutes

1           (2) The treatment of section 154.03 (1) of the statutes first applies to  
2 notifications made on the effective date of this subsection. ✓

3           (3) The treatment of section 155.60 (3) of the statutes first applies to power of  
4 attorney for health care instruments and statements of incapacity received on the  
5 effective date of this subsection. ✓

INSERT 5-4:

2001 - 2002 LEGISLATURE

LRBa0441/1  
MDK:wlj:kjf

ASSEMBLY AMENDMENT 2,  
TO 2001 ASSEMBLY BILL 168

April 18, 2001 - Offered by COMMITTEE ON LABOR AND WORKFORCE DEVELOPMENT.

At the locations indicated, amend the bill as follows:

1  
2 1. Page 5, line 4: before "unless" insert "if the withholding or withdrawal of  
3 nutrition or hydration would result in the patient's death from malnutrition or  
4 dehydration, or complications of malnutrition or dehydration, rather than from the  
5 underlying terminal illness or injury." END of INSERT 5-4 ✓

6  
INSERT 7-1:

7 2. Page 5, line 6: before "causes" insert "intentionally".  
8 3. Page 7, line 1: before "unless" insert "if the withholding or withdrawal of  
9 nutrition or hydration would result in the patient's death from malnutrition or  
10 dehydration, or complications of malnutrition or dehydration, rather than from the  
underlying terminal illness or injury." END of INSERT 7-1 ✓

11  
INSERT 10-1:

12 4. Page 7, line 3: before "causes" insert "intentionally".  
13 5. Page 10, line 1: before "unless" insert "if the withholding or withdrawal of  
nutrition or hydration would result in the patient's death from malnutrition or

INSERT 10-1 (continued)

1 dehydration, or complications of malnutrition or dehydration, rather than from the  
2 underlying terminal illness or injury. *oe* **END OF INSERT 10-1**

*INSERT 4 12-24:*  
3 ~~6. Page 10, line 3: before "causes" insert "intentionally".~~

4 ~~7. Page 12, line 24: before "unless" insert~~  
5 nutrition or hydration would result in the patient's death from malnutrition or  
6 dehydration, or complications of malnutrition or dehydration, rather than from the  
7 underlying terminal illness or injury. *oe* **END OF INSERT 12-24**

*INSERT 9 14-2:*  
8 ~~8. Page 13, line 1: before "causes" insert "intentionally".~~

9 ~~9. Page 14, line 1: before "unless" insert~~  
10 nutrition or hydration would result in the patient's death from malnutrition or  
11 dehydration, or complications of malnutrition or dehydration, rather than from the  
12 underlying terminal illness or injury. *oe* **END OF INSERT 14-1**

13 ~~10. Page 14, line 3: before "causes" insert "intentionally".~~

14 (END)





# State of Wisconsin

## LEGISLATIVE REFERENCE BUREAU

### RESEARCH APPENDIX -

### PLEASE DO NOT REMOVE FROM DRAFTING FILE

Date Added To File: 12/19/02 (Per MDK)



☒ The drafting file for **2001 LRB** a.0474/2 has been  
transferred to the drafting file for **2003 LRB** -1170

☒ This cover sheet, the final request sheet, and the final version of the 2001 draft were copied on yellow paper, and returned to the original 2001 drafting file.

☒ For research purposes, because the attached 2001 draft was incorporated into a new 2003 draft, this cover sheet and the complete drafting file was transferred, as a separate appendix, to the 2003 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

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☐ The drafting file for **2003 LRB** \_\_\_\_\_ has been  
copied/added to the drafting file for **2003 LRB** \_\_\_\_\_

☒ For research purposes, because the attached 2003 draft was incorporated into another 2003 draft, the attached drafting file was copied on yellow paper (darkened/auto centered/reduced to 90%), and added, as a appendix, to the new 2003 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

☒ This cover sheet was copied on yellow paper and added to rear of the original 2003 drafting file. The drafting file was then returned, intact, to its folder and filed.

INSERT 5-7:

2001 - 2002 LEGISLATURE

LRBa0474/2

MDK:jld:jt

**ASSEMBLY AMENDMENT ,  
TO 2001 ASSEMBLY BILL 168**

At the locations indicated, amend the bill as follows:

1. Page 5, line 7: after that line insert:

SECTION ~~84~~ 154.03 (1) (intro.) of the statutes is amended to read:  
# (intro.)

154.03 (1) Any person of sound mind and 18 years of age or older may at any time voluntarily execute a declaration, which shall take effect on the date of execution, authorizing the withholding or withdrawal of life-sustaining procedures or of feeding tubes when the person is in a terminal condition or is in a persistent vegetative state. A declarant may not authorize the withholding or withdrawal of any medication, life-sustaining procedure, or feeding tube if the declarant's attending physician advises that, in his or her professional judgment, the withholding or withdrawal will cause the declarant pain or reduce the declarant's comfort and the pain or discomfort cannot be alleviated through pain relief measures. A declarant may not authorize the withholding or withdrawal of nutrition

INSERT 5-7 (continued):

1 or hydration that is administered or otherwise received by the declarant through  
2 means other than a feeding tube unless the declarant's attending physician advises  
3 that, in his or her professional judgment, the administration is medically  
4 contraindicated. A declaration must be signed by the declarant in the presence of 2  
5 witnesses. If the declarant is physically unable to sign a declaration, the declaration  
6 must be signed in the declarant's name by one of the witnesses or some other person  
7 at the declarant's express direction and in his or her presence; such a proxy signing  
8 shall either take place or be acknowledged by the declarant in the presence of 2  
9 witnesses. The declarant is responsible for notifying his or her attending physician  
10 of the existence of the declaration. An attending physician who is so notified shall  
11 immediately review the declaration and, if the physician intends to invoke his or her rights under  
12 s. 253.09, inform the declarant orally and in writing of that intent and of the  
13 physician's concerns, if any, about the declaration. An attending physician who is so  
14 notified shall also make the declaration a part of the declarant's medical records. No  
15 witness to the execution of the declaration may, at the time of the execution, be any  
16 of the following:

17 SECTION ~~24~~ 155.60 (3) of the statutes is amended to read:

18 155.60 (3) Upon receipt of a power of attorney for health care instrument or a  
19 statement of incapacity under s. 155.05 (2), a health care facility or health care  
20 provider shall acknowledge this receipt in writing and, if the principal is a patient  
21 of the health care provider, the health care provider shall include the instrument or  
22 the statement in the medical record of the principal. In addition, if the health care  
23 provider is a physician and the principal is a patient of the physician, the physician  
24 shall review the instrument or statement and, if the physician intends to invoke his

immediately

shall, as soon as possible,

INSERT 5-7 (continued)

1 or her rights under s. 253.09, <sup>✓</sup>inform the principal orally and in writing of that intent  
2 and of the physician's concerns, if any, about the instrument or statement." *o*

3 ~~(END)~~

END of INSERT 5-7

shall, as soon as possible,

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1170/1dn  
MDK:.....

Representative Hundertmark:

✓  
This bill is a redraft of 2001 Assembly Bill 168, with the following changes:

1. The provisions of 2001 LRBa0474/2 are incorporated, except those provisions are revised to require immediate review and notification as soon as possible. Note that, based on this change, it was also necessary to make changes to the initial applicability provisions.

2. The provisions of AA2 to 2001 Assembly Bill 168 are incorporated. ✓

3. The employment discrimination provisions are revised to refer to "employees and prospective employees" rather than to "health care providers". ✓

4. The definition of "human embryo" is identical to the definition in 2001 Assembly Bill 736. ✓

5. The bill ~~describes~~ <sup>describes</sup> a procedure involving a drug or device that ~~is intended to~~ <sup>is intended to</sup>, rather than ~~may~~ <sup>may</sup> prevent the implantation of a ~~human embryo~~ <sup>human embryo</sup> rather than a fertilized human ovum. ✓

Mark D. Kunkel  
Senior Legislative Attorney  
Phone: (608) 266-0131  
E-mail: mark.kunkel@legis.state.wi.us

6. To be consistent with current drafting style,

"shall not" has been changed to "may not" throughout the bill.

eliminates the 2nd activity under 2001 Assembly Bill 168 regarding ✓

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1170/1dn  
MDK:cjs:ch

December 23, 2002

Representative Hundertmark:

This bill is a redraft of 2001 Assembly Bill 168, with the following changes:

1. The provisions of 2001 LRBa0474/2 are incorporated, except those provisions are revised to require immediate review and notification as soon as possible. Note that, based on this change, it was also necessary to make changes to the initial applicability provisions.
2. The provisions of AA2 to 2001 Assembly Bill 168 are incorporated.
3. The employment discrimination provisions are revised to refer to "employees and prospective employees," rather than to "health care providers."
4. The definition of "human embryo" is identical to the definition in 2001 Assembly Bill 736.
5. The bill eliminates the 2nd activity under 2001 Assembly Bill 168 regarding a procedure involving a drug or device that prevents the implantation of a fertilized human ovum.
6. To be consistent with current drafting style, "shall not" has been changed to "may not" throughout the bill.

Mark D. Kunkel  
Senior Legislative Attorney  
Phone: (608) 266-0131  
E-mail: mark.kunkel@legis.state.wi.us

**Mentkowski, Annie**

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**From:** Eng, Peter  
**Sent:** Wednesday, January 15, 2003 1:25 PM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB-1170/1 Topic: Exempting certain health care professionals from discipline and liability for refusing to be involved in abortions, sterilizations, euthanasia and certain oth

It has been requested by <Eng, Peter> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB-1170/1 Topic: Exempting certain health care professionals from discipline and liability for refusing to be involved in abortions, sterilizations, euthanasia and certain oth